SANJI
V

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1552 OF 2006

Balraj Hanumanta Pedamale,
R/o. 'E' Wing, Padamsali Society,
Room No. 102, Dharavi,
Mumbai – 400 017. ....Petitioner

Vs.

1 The Dy. Commissioner of Police
Zone-V, Mumbai.

2 The Principal Secretary to the
Government of Maharashtra
Home Department (Spl.)
Mantralaya, Mumbai

3 State of Maharashtra. ....
Respondents

Mr. U. N. Tripathi for petitioner.

Ms. M. H. Mhatre, APP for the State.

CORAM : SMT. RANJANA DESAI, J.
DATE : 10TH NOVEMBER, 2006.

ORAL JUDGMENT:-

1. In this writ petition, filed under Section 227 of the

Constitution of India, the petitioner has challenged the order dated

09/01/2006 issued under Section 56(1)(a) and (b) of the Bombay Police Act 1951, ("The said Act", for short) by respondent 1, the Deputy Commissioner of Police, Zone V, Mumbai.

2. The order of externment discloses that C. R. No. 58 of 2005 is registered against the petitioner at the Shahunagar Police station under Section 379 of the Indian Penal Code in respect of an incident dated 17/05/2005. Allegation against the petitioner is that on 17/05/2005 at about 2100 hours, the complainant was proceeding towards her house with her friend. At that time one unknown person came and snatched the gold chain worn by her and taking advantage of the fact that there was no light, he ran away. The complainant filed her complaint on 18/05/2005. Pursuant to the investigation conducted, the petitioner was arrested, in connection with the said offence, on 20/05/2005. He was subsequently released on bail.

3. The externment order also refers to two in-camera statements. Both the in-camera statements are recorded on

18/05/2005. The first

in-camera statement refers to an incident which is supposed to have taken place in the first week of April 2005 and the second in-camera statement refers to an incident which is supposed to have taken place in the last week of April, 2005. The in-camera statements indicate that the petitioner and his associates have created a reign of terror in the concerned locality. They are giving threats to the residents of the area and extorting money from them forcibly. It appears that out of fear, the witnesses are not willing to come forward to depose against the petitioner and statements of the witnesses are recorded only after giving them assurance that, their names would not be disclosed. Thus, on the basis of one case and two in-camera statements, respondent 1 has issued the impugned externment order on being subjectively satisfied that the movements or acts of the petitioner are causing alarm, danger or harm to the person or property of the people residing in the jurisdiction of Dharavi and Shahunagar Police Stations and areas adjoining thereto. The externment order states that the persons residing in the said area are feeling insecure and it is possible that the petitioners's activities may

cause sense of insecurity in future.

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The petitioner was, therefore, ordered to be externed for a period of two years from Greater Bombay including (the suburbs), Thane, New Bombay and Raigad Districts.

4. Being aggrieved by the said externment order, the petitioner preferred an appeal before the Government of Maharashtra under Section 60 of the said Act. The said appeal was rejected on 6th of May, 2006. However, the area from which the petitioner was ordered to be externed was restricted only to Bombay, New Bombay and Thane. Being aggrieved by the order of externment, dated 09/11/2006 and the order dated 06/05/2006 passed by the State of Maharashtra, the petitioner has approached this court.

5. I have heard Mr. Tripathi, learned counsel appearing for the petitioner, at length. Mr. Tripathi contended that the order passed by respondent 1, indicates non application of mind. He submitted that the order of externment refers to only one incident of chain snatching and two incidents mentioned in in-camera statements

which allegedly

took place in April 2005. He submitted that the incident of chain snatching is supposed to have taken place in the evening. According to the externing authority, after the incident the accused is supposed to have run away by taking advantage of the darkness. Mr. Tripathi submitted that such an isolated incident can never create alarm, danger or harm among the people. He submitted that even in the in-camera statements some incidents which have taken place in April 2005 are mentioned which have no potentiality to create alarm, danger or harm among the people. The learned counsel contended that in any case, the said incidents have allegedly taken place in April 2005 and the externment order is passed on 09/1/2006. He submitted that there is unexplained delay in passing externment order and that also vitiates it.

6. Mr. Tripathi urged that assuming the allegations made against the petitioner are true it was possible for the respondents to deal with the petitioner with the help of ordinary criminal law. This is not a case, where it was necessary to extern the petitioner. In

support

of this submission, Mr. Tripathi relied upon the judgment of this Court in ***Bhausaheb Jagannath Chavan Vs. The State of Maharashtra and Others 1995(2) Bom. C.R. 383***. In that case this Court was dealing with the order of externment issued under Section 56(1) (a) (b) of the said Act. The following observations of this Court are relied upon by Mr. Tripathi:-

> *"The externment proceedings are largely pre-cautionary and based on suspicion, and the question whether the individual concerned should be externed or not depends upon the subjective satisfaction of the officer or the authority concerned and that the provisions pertaining to them in the Act are intended to be used in special cases requiring special treatment, that is to say, cases which cannot be dealt with under the ordinary law."*

7. Mr. Tripathi urged that in any event, this court should consider the fact that the petitioner is 22 years of age. He submitted that even if it is assumed that the externing authority is right in externing the petitioner, this court should cut down the period of externment to one year. In support of this submission he relied upon

the judgment of this Court in ***Abdul Wasim S/o Mohammad Faruq Musalman Vs. State of Maharashtra 1998 (1) M . L. J. 157***.

8. The learned APP, on the other hand, submitted that no interference is necessary with the impugned order. She took me through the affidavit of Shri Dnyaneshwar, Deputy Commissioner of Police in support of the order of externment.

9. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for the parties. I am not inclined to hold that the order of externment was uncalled for. The nature of the first incident of chain snatching, in my opinion, is such that it would certainly create alarm in the minds of the people of the locality. Mr. Tripathi submitted that it is an individual incident. The submission must be rejected. This incident has not arisen out of previous enemity. The petitioner waylaid a woman and snatched her gold chain. This incident has propensity to cause insecurity amongst people. The in- camara statements indicate that the petitioner has taken to the life of crimes. He is indulging in extorting money from the people by giving threats. The order issued under Section 56(1)(a)

and (b), therefore, cannot be called unjustified in this case. So far as

the alleged delay in issuing externment order is concerned this point is not raised in the petition and hence it is not possible to consider it at this stage.

10. However, in my opinion, order externing the petitioner for 2 years is harsh. The petitioner is 22 years of age. The order externing him for a period of 1 year, in my opinion, would serve the ends of justice. In the facts of this case order externing the petitioner for 2 years would be counter productive. In this connection I may usefully refer to the judgment of this Court in ***Abdul Washim' case (supra)***. In that case the court was dealing with a person who was 18 years of age. Considering his age, this Court reduced the externment period from 2 years to 1 year. In my opinion, similar course needs to be adopted in this case. If the order externing the petitioner for a period of 2 years is maintained in the peculiar facts of this case there is a possibility that the petitioner may become a hardened criminal. Hence, I pass the following order.

11. Petition is partly allowed. The externment order dated 09/01/2006 is modified and instead of two years, the petitioner stands externed for a period of one year only. Petition is disposed of. Needless to say that the Criminal Application No. 379/2006, also stands disposed of.

(SMT. RANJANA DESAI, J)